

Remarks

Claims 1, 5, 6 and 10-16 remain in this application. Claims 17-83 are withdrawn. Claims 2-4 and 7-9 are canceled. Claim 1 is amended to state that the hydrated protein stabilizing agent is a high methoxyl pectin. Support for this amendment can be found, *inter alia*, in canceled claim 4. Claim 1 is also amended to state that the slurry of the aqueous protein material (C) is not subjected to spray drying. Support for this amendment can be found, *inter alia*, on page 8 lines 28-29.

Rejection Under 35 USC §102(e)

Claims 1-16 are rejected under 35 USC §102(e) as being anticipated by Shen (US Patent Application No. US 2004/0258827).

The soy protein in Shen is a dried isolate as stated in paragraph [0030]. In Examples 1-5 of Shen, the soy protein isolates of Supro Plus 675, FXP 950, FXP HO120, and Supro XT 40 are added to water in order to hydrate the soy protein. Hydration causes the protein to incorporate water. The soy protein of the present invention, as amended, is not subjected to spray drying conditions. There are advantages in not subjecting the soy protein to the spray drying step. Liquid soy protein that is obtained prior to the spray drying process has a high protein concentration and full functionality. As such, it can be used in acid beverages that would have a high degree of stability over a long period of storage time at ambient temperature. A liquid soy protein will retain all its functionality, since there is no phase transition generated by the spray drying process. The spray drying step tends to decrease the solubility of the protein in the acid beverage which then generates a large amount of insoluble particles in the acid beverage. The decrease in solubility of a spray dried protein is due to the larger particle size generated upon spray drying. Reconsideration and withdrawal of this ground of rejection is respectfully requested.

Claims 1-16 are rejected under 35 USC §102(e) as being anticipated by Huang (US Patent No. 6,887,508).

Huang relates to a protein stabilizing agent for stabilizing a protein suspension in an aqueous acidic liquid such as a juice. The protein stabilizing agent is comprised of a high

methoxyl pectin and a propylene glycol alginate. However, the present invention, as amended, claims a hydrated protein stabilizing agent comprising pectin. Further, the soy protein in Huang is a dried isolate as stated in col 4, lines 63-67. In Examples 1-5 of Huang, the soy protein isolates of Supro Plus 675, FXP 950, FXP HO120, and Supro XT 40 are added to water in order to hydrate the soy protein. Hydration causes the protein to incorporate water. The soy protein of the present invention, as amended, is not subjected to spray drying conditions. There are advantages in not subjecting the soy protein to the spray drying step. Liquid soy protein that is obtained prior to the spray drying process has a high protein concentration and full functionality. As such, it can be used in acid beverages that would have a high degree of stability over a long period of storage time at ambient temperature. A liquid soy protein will retain all its functionality, since there is no phase transition generated by the spray drying process. The spray drying step tends to decrease the solubility of the protein in the acid beverage which then generates a large amount of insoluble particles in the acid beverage. The decrease in solubility of a spray dried protein is due to the larger particle size generated upon spray drying. Reconsideration and withdrawal of this ground of rejection is respectfully requested.

Claims 1-16 are rejected under 35 USC §102(e) as being anticipated by Patel (US Patent No. 6,811,804).

Patel et al. is directed to the preparation of a beverage employing a soy protein having an isoflavones level of from 0.5 mg isoflavone per gram of soy protein, a stabilizing agent and vegetable/fruit juices. The pH of the beverage is about 4. The soy protein in Patel et al. is also a dried isolate as stated in col 10, lines 23-28. The soy protein of the present invention, as amended, is not subjected to spray drying conditions. There are advantages in not subjecting the soy protein to the spray drying step. Liquid soy protein that is obtained prior to the spray drying process has a high protein concentration and full functionality. As such, it can be used in acid beverages that would have a high degree of stability over a long period of storage time at ambient temperature. A liquid soy protein will retain all its functionality, since there is no phase transition generated by the spray drying process. The spray drying step tends to decrease the solubility of the protein in the acid beverage which then generates a large amount of insoluble particles in the acid beverage. The decrease in solubility of a spray dried protein is due to the

larger particle size generated upon spray drying. Reconsideration and withdrawal of this ground of rejection is respectfully requested.

Rejection Under 35 USC §103(a)

Claims 1-16 are rejected under 35 USC §103(a) as being unpatentable over Wong (US Patent Application No. 2005/0202147).

In the Office Action, the Examiner stated that the rejection under 35 USC §103(a) might be overcome by:

- (1) a showing under 37 CFR §1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another";
- (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR §1.131; or
- (3) an oath or declaration under 37 CFR §1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 USC 104, together with a terminal disclaimer in accordance with 37 CFR §1.321(c).

Wong et al. is directed to an acidic beverage composition utilizing, among other components, a hydrated protein material having a combination of an inositol-6-phosphate content, an inositol-5-phosphate content, an inositol-4-phosphate content and an inositol-3-phosphate content of less than 8.0 $\mu\text{mol/g}$. Within the present invention, the claimed subject matter protein is not a reduced inositol phosphate protein.

In order to remove this rejection, Applicants are complying with (3) above and submit a declaration under 37 CFR §1.130 stating that the application and reference are currently owned by Solae, LLC and that the inventor Cheng Shen named in the application is the prior inventor under 35 USC 104, together with a terminal disclaimer in accordance with 37 CFR §1.321(c). Reconsideration and withdrawal of this ground of rejection is respectfully requested.

Claims 1-16 are rejected under 35 USC §103(a) as being unpatentable over Klavons et al. (US Patent No. 5,286,511).

Klavons et al. relates to a process for imparting desirable cloud to beverages. In the process, pectin is solubilized in water and added to a juice having a pH of 3.7. A soy protein isolate is solubilized and the solubilized isolate is added to the solubilized pectin/juice mixture. In Col. 2 at lines 27-31, Klavons et al. teach the importance of solubilizing the pectin prior to adding the protein. If the pectin is added during or after protein addition, excessive aggregation and settling out of protein particles will occur, with the loss of cloud effect. While there is no support for order of addition in the present invention of (A) and (B), it must be assumed that the addition or blending of (A) and (B) is simultaneous. As stated on page 8 at lines 16-19, a hydrated protein stabilizing agent (A) and a flavoring material (B) are combined as a preblend (I) and combined with either a slurry of a non-dried, aqueous protein material (C) or a preblend (II) of a hydrated protein stabilizing agent (A) and a slurry of a non-dried, aqueous protein material (C).

Further, the soy protein of the present invention, as amended, is not subjected to spray drying conditions. There are advantages in not subjecting the soy protein to the spray drying step. Liquid soy protein that is obtained prior to the spray drying process has a high protein concentration and full functionality. As such, it can be used in acid beverages that would have a high degree of stability over a long period of storage time at ambient temperature. A liquid soy protein will retain all its functionality, since there is no phase transition generated by the spray drying process. The spray drying step tends to decrease the solubility of the protein in the acid beverage which then generates a large amount of insoluble particles in the acid beverage. The decrease in solubility of a spray dried protein is due to the larger particle size generated upon spray drying. Reconsideration and withdrawal of this ground of rejection is respectfully requested.

Claims 7-9 are rejected under 35 USC §103(a) as being unpatentable over Huang (US Patent No. 5,286,511).

This rejection is rendered moot by the cancellation of claims 7-9.

Claims 7-9 are rejected under 35 USC §103(a) as being unpatentable over Patel et al. (US Patent No. 6,811,804.

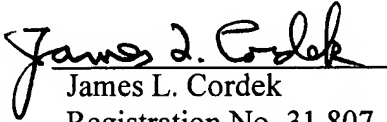
This rejection is rendered moot by the cancellation of claims 7-9.

For the foregoing reasons, it is submitted that the present claims are in condition for allowance. The foregoing remarks are believed to be a full and complete response to the outstanding office action. Therefore favorable reconsideration and allowance are respectfully requested. If for any reason the Examiner believes a telephone conference would expedite the prosecution of this application, it is respectfully requested that he call Applicant's representative at 314.982.2409.

If any additional fees are due in connection with the filing of this document, the Commissioner is authorized to charge those fees to our Deposit Account No. 50-0421.

Date: April 11, 2006

Respectfully submitted,
SOLAE, LLC


James L. Cordek
Registration No. 31,807

PO Box 88940
St. Louis, MO 63188
314.982.2409